

“(2) SCOPE OF PROGRAM.—Under the pilot program, the Secretary may enter into contracts for the acquisition of military purpose nondevelopmental items in accordance with the requirements set forth in subsection (b).

“(b) CONTRACT REQUIREMENTS.—Each contract entered into under the pilot program—

“(1) shall be a firm, fixed price contract, or a firm, fixed price contract with an economic price adjustment clause;

“(2) shall be in an amount not in excess of \$100,000,000, including all options;

“(3) shall provide—

“(A) for the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and

“(B) that failure to make delivery as provided for under subparagraph (A) may result in the termination of such contract for default; and

“(4) shall be—

“(A) exempt from the requirement to submit certified cost or pricing data under chapter 271 of title 10, United States Code, and the cost accounting standards under chapter 15 of title 41, United States Code; and

“(B) subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations, as provided in section 3705 of title 10, United States Code.

“(c) REGULATIONS.—If the Secretary establishes the pilot program authorized under subsection (a), the Secretary shall prescribe regulations governing such pilot program. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation and shall include the contract clauses and procedures necessary to implement such program.

“(d) PROGRAM ASSESSMENT.—If the Secretary establishes the pilot program authorized under subsection (a), not later than four years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report setting forth the assessment of the Comptroller General of the extent to which the pilot program—

“(1) enabled the Department to acquire items that otherwise might not have been available to the Department;

“(2) assisted the Department in the rapid acquisition and fielding of capabilities needed to meet urgent operational needs; and

“(3) protected the interests of the United States in paying fair and reasonable prices for the item or items acquired.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘military purpose nondevelopmental item’ means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. For purposes of this paragraph, an item shall not be considered to be developed exclusively at private expense if development of the item was paid for in whole or in part through—

“(A) independent research and development costs or bid and proposal costs that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

“(B) foreign government funding.

“(2) The term ‘nondevelopmental item’—

“(A) has the meaning given that term in section 110 of title 41, United States Code; and

“(B) also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement in subsection (b)(3)(A).

“(3) The term ‘nontraditional defense contractor’ has the meaning given that term in section 3014 of

title 10, United States Code (as added by subsection (g)).

“(4) The terms ‘independent research and development costs’ and ‘bid and proposal costs’ have the meaning given such terms in section 31.205–18 of the Federal Acquisition Regulation.

“(f) SUNSET.—

“(1) IN GENERAL.—The authority to carry out the pilot program shall expire on December 31, 2019.

“(2) CONTINUATION OF CURRENT CONTRACTS.—The expiration under paragraph (1) of the authority to carry out the pilot program shall not affect the validity of any contract awarded under the pilot program before the date of the expiration of the pilot program under that paragraph.”

PUBLICATION OF NOTIFICATION OF BUNDLING OF CONTRACTS OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VIII, § 820, Oct. 28, 2009, 123 Stat. 2410, provided that:

“(a) REQUIREMENT TO PUBLISH NOTIFICATION FOR BUNDLING.—A contracting officer of the Department of Defense carrying out a covered acquisition shall publish a notification consistent with the requirements of paragraph (c)(2) of subpart 10.001 of the Federal Acquisition Regulation on the website known as FedBizOpps.gov (or any successor site) at least 30 days prior to the release of a solicitation for such acquisition and, if the agency has determined that measurably substantial benefits are expected to be derived as a result of bundling such acquisition, shall include in the notification a brief description of the benefits.

“(b) COVERED ACQUISITION DEFINED.—In this section, the term ‘covered acquisition’ means an acquisition that is—

“(1) funded entirely using funds of the Department of Defense; and

“(2) covered by subpart 7.107 of the Federal Acquisition Regulation (relating to acquisitions involving bundling).

“(c) CONSTRUCTION.—

“(1) NOTIFICATION.—Nothing in this section shall be construed to alter the responsibility of a contracting officer to provide the notification referred to in subsection (a) with respect to a covered acquisition, or otherwise provide notification, to any party concerning such acquisition under any other requirement of law or regulation.

“(2) DISCLOSURE.—Nothing in this section shall be construed to require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code, or is otherwise restricted from public disclosure by law or Executive order.

“(3) ISSUANCE OF SOLICITATION.—Nothing in this section shall be construed to require a contracting officer to delay the issuance of a solicitation in order to meet the requirements of subsection (a) if the expedited issuance of such solicitation is otherwise authorized under any other requirement of law or regulation.”

SMALL ARMS ACQUISITION STRATEGY AND REQUIREMENTS REVIEW

Pub. L. 110–417, [div. A], title I, § 143, Oct. 14, 2008, 122 Stat. 4381, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(1), Jan. 7, 2011, 124 Stat. 4374, provided that:

“(a) SECRETARY OF DEFENSE REPORT.—Not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the small arms requirements of the Armed Forces and the industrial base of the United States. The report shall include the following:

“(1) An assessment of Department of Defense-wide small arms requirements in terms of capabilities and quantities, based on an analysis of the small arms capability assessments of each military department.

“(2) An assessment of plans for small arms research, development, and acquisition programs to meet the requirements identified under paragraph (1).

“(3) An assessment of capabilities, capacities, and risks in the small arms industrial base of the United States to meet the requirements of the Department of Defense for pistols, carbines, rifles, and light, medium, and heavy machine guns during the 20 years following the date of the report.

“(4) An assessment of the costs, benefits, and risks of full and open competition for the procurement of non-developmental pistols and carbines that are not technically compatible with the M9 pistol or M4 carbine to meet the requirements identified under paragraph (1).

“(b) COMPETITION FOR A NEW INDIVIDUAL WEAPON.—

“(1) COMPETITION REQUIRED.—If the small arms capabilities based assessments by the Army identify gaps in small arms capabilities and the Secretary of the Army determines that a new individual weapon is required to address such gaps, the Secretary shall procure the new individual weapon using full and open competition as described in paragraph (2).

“(2) FULL AND OPEN COMPETITION.—The full and open competition described in this paragraph is competition among all responsible manufacturers that—

“(A) is open to all developmental item solutions and non-developmental item solutions; and

“(B) provides for the award of a contract based on selection criteria that reflect the key performance parameters and attributes identified in a service requirements document approved by the Army.

“(c) SMALL ARMS DEFINED.—In this section, the term ‘small arms’—

“(1) means man-portable or vehicle-mounted light weapons, designed primarily for use by individual military personnel for anti-personnel use; and

“(2) includes pistols, carbines, rifles, and light, medium, and heavy machine guns.”

TRUSTED DEFENSE SYSTEMS

Pub. L. 110-417, [div. A], title II, § 254, Oct. 14, 2008, 122 Stat. 4402, as amended by Pub. L. 116-92, div. A, title IX, § 902(37), Dec. 20, 2019, 133 Stat. 1547; Pub. L. 116-283, div. A, title XVIII, § 1806(e)(2)(C), Jan. 1, 2021, 134 Stat. 4155, provided that:

“(a) VULNERABILITY ASSESSMENT REQUIRED.—The Secretary of Defense shall conduct an assessment of selected covered acquisition programs to identify vulnerabilities in the supply chain of each program’s electronics and information processing systems that potentially compromise the level of trust in the systems. Such assessment shall—

“(1) identify vulnerabilities at multiple levels of the electronics and information processing systems of the selected programs, including microcircuits, software, and firmware;

“(2) prioritize the potential vulnerabilities and effects of the various elements and stages of the system supply chain to identify the most effective balance of investments to minimize the effects of compromise;

“(3) provide recommendations regarding ways of managing supply chain risk for covered acquisition programs; and

“(4) identify the appropriate lead person, and supporting elements, within the Department of Defense for the development of an integrated strategy for managing risk in the supply chain for covered acquisition programs.

“(b) ASSESSMENT OF METHODS FOR VERIFYING THE TRUST OF SEMICONDUCTORS PROCURED FROM COMMERCIAL SOURCES.—The Under Secretary of Defense for Acquisition and Sustainment, in consultation with appropriate elements of the Department of Defense, the intelligence community, private industry, and academia, shall conduct an assessment of various methods of verifying the trust of semiconductors procured by the Department of Defense from commercial sources for use in mission-critical components of potentially vulnerable defense systems. The assessment shall include the following:

“(1) An identification of various methods of verifying the trust of semiconductors, including methods under development at the Defense Agencies, government laboratories, institutions of higher education, and in the private sector.

“(2) A determination of the methods identified under paragraph (1) that are most suitable for the Department of Defense.

“(3) An assessment of the additional research and technology development needed to develop methods of verifying the trust of semiconductors that meet the needs of the Department of Defense.

“(4) Any other matters that the Under Secretary considers appropriate.

“(c) STRATEGY REQUIRED.—

“(1) IN GENERAL.—The lead person identified under subsection (a)(4), in cooperation with the supporting elements also identified under such subsection, shall develop an integrated strategy—

“(A) for managing risk—

“(i) in the supply chain of electronics and information processing systems for covered acquisition programs; and

“(ii) in the procurement of semiconductors; and

“(B) that ensures dependable, continuous, long-term access and trust for all mission-critical semiconductors procured from both foreign and domestic sources.

“(2) REQUIREMENTS.—At a minimum, the strategy shall—

“(A) address the vulnerabilities identified by the assessment under subsection (a);

“(B) reflect the priorities identified by such assessment;

“(C) provide guidance for the planning, programming, budgeting, and execution process in order to ensure that covered acquisition programs have the necessary resources to implement all appropriate elements of the strategy;

“(D) promote the use of verification tools, as appropriate, for ensuring trust of commercially acquired systems;

“(E) increase use of trusted foundry services, as appropriate; and

“(F) ensure sufficient oversight in implementation of the plan.

“(d) POLICIES AND ACTIONS FOR ASSURING TRUST IN INTEGRATED CIRCUITS.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall—

“(1) develop policy requiring that trust assurance be a high priority for covered acquisition programs in all phases of the electronic component supply chain and integrated circuit development and production process, including design and design tools, fabrication of the semiconductors, packaging, final assembly, and test;

“(2) develop policy requiring that programs whose electronics and information systems are determined to be vital to operational readiness or mission effectiveness are to employ trusted foundry services to fabricate their custom designed integrated circuits, unless the Secretary specifically authorizes otherwise;

“(3) incorporate the strategies and policies of the Department of Defense regarding development and use of trusted integrated circuits into all relevant Department directives and instructions related to the acquisition of integrated circuits and programs that use such circuits; and

“(4) take actions to promote the use and development of tools that verify the trust in all phases of the integrated circuit development and production process of mission-critical parts acquired from non-trusted sources.

“(e) SUBMISSION TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]—

- “(1) the assessments required by subsections (a) and (b);
- “(2) the strategy required by subsection (c); and
- “(3) a description of the policies developed and actions taken under subsection (d).

“(f) DEFINITIONS.—In this section:

“(1) The term ‘covered acquisition programs’ means an acquisition program of the Department of Defense that is a major system for purposes of section 3041 of title 10, United States Code.

“(2) The terms ‘trust’ and ‘trusted’ refer, with respect to electronic and information processing systems, to the ability of the Department of Defense to have confidence that the systems function as intended and are free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during its life cycle.

“(3) The term ‘trusted foundry services’ means the program of the National Security Agency and the Department of Defense, or any similar program approved by the Secretary of Defense, for the development and manufacture of integrated circuits for critical defense systems in secure industrial environments.”

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFGHANISTAN

Pub. L. 110-181, div. A, title VIII, § 886, Jan. 28, 2008, 122 Stat. 266, as amended by Pub. L. 112-239, div. A, title VIII, § 842, Jan. 2, 2013, 126 Stat. 1845; Pub. L. 114-92, div. A, title VIII, § 886(a), Nov. 25, 2015, 129 Stat. 949, provided that:

“(a) IN GENERAL.—In the case of a product or service to be acquired in support of military operations or stability operations in Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) for which the Secretary of Defense makes a determination described in subsection (b), and except as provided in subsection (d), the Secretary may conduct a procurement in which—

“(1) competition is limited to products or services that are from Afghanistan;

“(2) procedures other than competitive procedures are used to award a contract to a particular source or sources from Afghanistan; or

“(3) a preference is provided for products or services that are from Afghanistan.

“(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that—

“(1) the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan; or

“(2) it is in the national security interest of the United States to limit competition, use procedures other than competitive procedures, or provide a preference as described in subsection (a) because—

“(A) such limitation, procedure, or preference is necessary to provide a stable source of jobs in Afghanistan; and

“(B) such limitation, procedure, or preference will not adversely affect—

“(i) military operations or stability operations in Afghanistan; or

“(ii) the United States industrial base.

“(c) PRODUCTS, SERVICES, AND SOURCES FROM AFGHANISTAN.—For the purposes of this section:

“(1) A product is from Afghanistan if it is mined, produced, or manufactured in Afghanistan.

“(2) A service is from Afghanistan if it is performed in Afghanistan by citizens or permanent resident aliens of Afghanistan.

“(3) A source is from Afghanistan if it—

“(A) is located in Afghanistan; and

“(B) offers products or services that are from Afghanistan.

“(d) EXCLUSION OF ITEMS ON THE ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) shall not be available for the procurement of any

good that is contained in the procurement catalog described in section 8503(a) of title 41, United States Code, in Afghanistan if such good can be produced and delivered by a qualified nonprofit agency for the blind or a nonprofit agency for other severely disabled [sic] in a timely fashion to support mission requirements.”

[Pub. L. 112-239, div. A, title VIII, § 842(1), Jan. 2, 2013, 126 Stat. 1845, which directed amendment of section 886 of Pub. L. 110-181, set out above, by striking “Iraq or” in section heading, was executed by striking “Iraq and”, to reflect the probable intent of Congress.]

PREVENTION OF EXPORT CONTROL VIOLATIONS

Pub. L. 110-181, div. A, title VIII, § 890, Jan. 28, 2008, 122 Stat. 269, as amended by Pub. L. 110-417, [div. A], title X, § 1061(b)(6), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111-383, div. A, title X, § 1075(f)(6), Jan. 7, 2011, 124 Stat. 4376, provided that:

“(a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations requiring any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.] (as continued in effect under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.]) to comply with those Acts and applicable regulations with respect to such goods and technology, including the International Traffic in Arms Regulations and the Export Administration Regulations. Regulations prescribed under this subsection shall include a contract clause enforcing such requirement.

“(b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any contractor under a contract with the Department of Defense to provide goods or technology that is subject to export controls under the Arms Export Control Act or the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is made aware of any relevant resources made available by the Department of State and the Department of Commerce to assist in compliance with the requirement established by subsection (a) and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plan.

“(c) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report assessing the utility of—

“(1) requiring defense contractors (or subcontractors at any tier) to periodically report on measures taken to ensure compliance with the International Traffic in Arms Regulations and the Export Administration Regulations;

“(2) requiring periodic audits of defense contractors (or subcontractors at any tier) to ensure compliance with all provisions of the International Traffic in Arms Regulations and the Export Administration Regulations;

“(3) requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the Arms Export Control Act and the Export Administration Act of 1979; and

“(4) requiring a designated corporate liaison, available for training provided by the United States Government, whose primary responsibility would be contractor compliance with the Arms Export Control Act and the Export Administration Act of 1979.

“(d) DEFINITIONS.—In this section:

“(1) EXPORT ADMINISTRATION REGULATIONS.—The term ‘Export Administration Regulations’ means those regulations contained in parts 730 through 774 of title 15, Code of Federal Regulations (or successor regulations).